



An
Bord
Pleanála

Inspector's Report ABP-309162-21

Development	Retention permission for balcony at first floor level at rear
Location	23, Glasnevin Court, Glasnevin, Dublin 11
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3597/20
Applicant(s)	Jason & Sharon Clarke
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party vs. Refusal
Appellant(s)	Jason & Sharon Clarke
Observer(s)	None
Date of Site Inspection	29 th March 2021
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located within the Glasnevin Court housing estate at the eastern end of Tolka Valley Park and comprises a two-storey mid-terrace house. Due to a significant drop in levels from the front to the rear of the site, the terrace appears single storey to the front and two-storey to the rear. The house has a stated floor area of 84m², containing living accommodation at the upper floor (road level) and bedroom accommodation at the lower level.
- 1.2. There is a shared vehicular access and parking area to the front of the site. To the rear is a private garden accessed from the lower bedroom level. The garden has an area of c. 55m² and a depth of c. 11 metres. It contains a garden shed and the supporting frame for the first-floor balcony. In the wider context, the Glasnevin Court development is surrounded by Tolka Valley Park to the north and west. The Tolka River itself runs c. 35 metres north of the site.

2.0 Proposed Development

- 2.1. Permission is sought to retain the existing balcony at first-floor level to the rear of the house. The balcony has a stated floor area of 14.2m² and is accessed directly from the lounge at the upper level of the property. The deck level of the balcony is c. 3.6m above the ground level of the rear garden and is bounded by c. 1.2m-high glazed panels and a chrome handrail. The balcony is fixed to the rear façade of the house and is supported by vertical steel posts.

3.0 Planning Authority Decision

3.1. Decision

By order dated 9th December 2020, Dublin City Council (DCC) issued notification of the decision to refuse permission for the following reason:

The external balcony area at first floor level to the rear of the house results in the loss of privacy through overlooking of the dwellings to either side and noise disturbance. The existing balconies to dwellings elsewhere on the terrace are unauthorised development and do not form a suitable or acceptable precedent. The

retention of the development would cause serious injury, in itself and by the precedent established, on the residential amenities of the area by reason of excessive overlooking and noise disturbance. The development proposed for retention would therefore be contrary to the policies and objectives of the current Dublin City Development Plan and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report can be summarised as follows:

- While there are several examples of existing balconies to the rear of the terrace, it is considered that none have planning permission and, therefore, do not form a reliable precedent.
- The decisions made under P.A. Ref.'s 2928/16 and 3761/16 (see section 4.0 of this report) are precedent decisions for refusing permission for such structures.
- The balcony overlooks the rear gardens of the dwellings to either side (No.'s 22 & 24) and, regardless of the condition of these gardens, this is not a situation that is reasonable or to be encouraged.
- It also overlooks the rear first-floor windows of the adjoining properties.
- A refusal of permission was recommended, which forms the basis of the DCC decision.

3.2.2. Other Technical Reports

Drainage Division: No objections subject to conditions.

3.3. Prescribed Bodies

TII: The site is within the area for an adopted Section 49 Supplementary Development Contribution Scheme for the LUAS Cross City project. If not otherwise exempted, a condition of permission should require payment of the Section 49 levy.

3.4. Third Party Observations

There was one submission from Derek Pierce of 24 Glasnevin Court. The submission objects to the proposal on the following grounds:

- The development deprives the garden of natural sunlight and reduces the value of adjacent properties.
- The estate suffers from poor construction and concerns are raised about the need for suitable reinforcements.
- Noise and light impacts are a major inconvenience.
- The rear of the property is already setback from No. 24 and the balcony extends halfway down the back garden.
- The structure is directly outside the main window and above the toilet.

4.0 Planning History

The DCC planner's report outlines the following history:

- An Enforcement case (Ref. E0120/20) exists in relation to the balcony.
- **P.A. Ref. 2928/16:** At No. 30 Glasnevin Court, permission for incorporation of a front porch to the upper ground floor entrance of 2.6 sq.m, the step extension to the rear of the property over 2 floors, upper & lower ground floor with the incorporation of an external balcony area, the extension on the lower ground floor to the underside the existing walkway. The total proposed area for development is 10.5 sq.m to the upper ground floor & 13.6 sq.m to the lower ground floor and the incorporation of solar panels to the front at roof level. A split decision issued in this case, which refused permission for the balcony for the following reason:

The proposed external balcony area including spiral stairway to the garden at first floor level to the rear of the house would result in the loss of privacy and serious detracting from the residential amenity of the property at a lower level adjacent the site. The proposed development would therefore seriously injure the amenities and depreciate the value of property adjacent the site. The

proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- **P.A. Ref. 3761/16:** At No. 33 Glasnevin Court, permission for a 15 sq.m. ground floor extension with first floor balcony all to the rear of the existing house and associated site works was granted, subject to the omission of the balcony under condition no. 2 as follows:

The development hereby approved shall incorporate the following amendments: -

(a) The balcony located at 1st floor level to the proposed rear extension shall be permanently omitted

(b) The balustrades/railings attached to the parapet of the proposed rear extension shall be permanently omitted

(c) The sill level of the existing 1st floor rear windows shall be maintained and the roof of the proposed rear extension shall not be used as a balcony/roof terrace.

Reason: *In the interests of orderly development, privacy and neighbouring residential amenity*

5.0 Policy Context

5.1. Development Plan

5.1.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z1', the objective for which is '*To protect, provide and improve residential amenities*'.

5.1.2 Section 16.10.12 of the Plan deals with 'Alterations and Extensions to Dwellings'. In summary, it is recommended that proposals should respect the visual amenity / character of the area and should protect the residential amenity of adjoining properties. Appendix 17 'Guidelines for Residential Extensions' sets out more detailed advice and principles in this regard and section 17.4 states that balconies will only be allowed where they are well screened and do not adversely overlook adjoining properties.

5.2. Natural Heritage Designations

There are no natural heritage designations of any relevance to the proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

The decision of DCC to refuse permission has been appealed by the applicants, Jason and Sharon Clarke. The grounds of appeal can be summarised as follows:

- Five of the 12 houses within this terrace have constructed balconies to the rear, which establishes a precedent irrespective of whether they are unauthorised.
- The development does not detract from residential amenity and would be consistent with the zoning for the area.
- The public green areas to the area cannot be developed due to flood risk.
- The balcony enhances residential amenity and accessibility to external space.
- Neither of the adjoining neighbours now have an objection, which is supported by letters from each of the neighbours. It has been agreed to increase the height of screening on both sides of the balcony, which will address overlooking and noise disturbance.
- The balcony is open at upper and lower levels, meaning that there will be little impact on the availability of natural light to adjoining properties.

6.2. Planning Authority Response

None.

6.3. Observations

None.

7.0 Assessment

7.1. Having inspected the site and considered the documentation and drawings on the appeal file, including all submissions received in relation to the appeal, I consider that the main issues for assessment in this case are limited to impacts on visual amenity and residential amenity.

7.2 Visual amenity

7.2.1 The balcony structure is located to the rear of the terrace and its visibility from the public realm is largely confined to views from Tolka Valley Park to the north. I consider that the structure is of a minor scale when viewed in the context of the overall terrace. It has a relatively limited visual impact when viewed from the public realm and would not seriously detract from the visual amenity of the surrounding area. Accordingly, I have no objection in this regard.

7.3 Residential Amenity

7.3.1 Consistent with the nature of the planning authority's decision, I consider that the main issue for consideration in this appeal is the impact of the balcony structure on the residential amenity of adjoining properties and the implications for the proper planning and sustainable development of the area.

7.3.2. As previously outlined in this report, the Development Plan guidance states that balconies will only be allowed where they are well screened and do not adversely overlook adjoining properties. In this regard, I note that the balcony is significantly elevated in relation to the adjoining rear gardens. While the opaque glazed panels along the sides of the balcony provide some level of screening up to a height of c. 1 metre above deck level, it is clearly not sufficient to prevent overlooking of the private rear gardens of adjoining properties. I also note the concerns raised by DCC in relation to overlooking of the rear windows of the adjoining properties.

7.3.3. The balcony structure has been constructed on the north-facing side of the terrace. Accordingly, I consider that the potential for overshadowing is limited given that the rear of adjoining properties would already be overshadowed by the existing terrace for the majority of the day. I would also consider it unlikely that daylight impacts will

be significant given that the structure is open at the lower level and is bounded by glazing at the upper level.

- 7.3.4. However, having regard to the elevated level of the structure and its proximity to the site boundaries, I consider that it does have an overbearing impact on the adjoining properties. This impact is particularly pronounced having regard to its intrusive nature by reason of the aforementioned overlooking concerns.
- 7.3.5. As well as its height and proximity, I consider that the substantial floor area of the balcony must be taken into consideration. With a total area of 14m², it would be considered a substantial addition to the existing living accommodation and has the potential for regular use during suitable conditions. While I acknowledge that this would be of significant value to the applicants, I would have serious concerns that the potential increased activity at this level would cause unacceptable noise, disturbance, and intrusion for adjoining residents.
- 7.3.6. I note the appellant's contention that it has been agreed to increase the height of screening on both sides of the balcony in the interest of privacy. No specific details of the proposed height and materials have been included in the appeal. However, I consider that any such increased height would add to the overbearing impact of the structure. Furthermore, the proposal for screening to the sides of the balcony would not satisfactorily prevent overlooking of adjoining gardens from the northern end of the balcony.
- 7.3.7. It is acknowledged that the appeal includes letters outlining that there are no objections from the adjoining residents of No.'s 22 & 24. However, I consider that the appeal should ultimately be decided on its merits having regard to the proper planning and sustainable development of the area. Furthermore, I consider that the overlooking impacts associated with the balcony extend beyond the immediate neighbours as the structure is less than 6 metres from the rear gardens of No.'s 21 and 25.
- 7.3.8. I have reviewed the cases referred to by the planning authority (P.A. Ref. 2928/16 and P.A. Ref. 3761/16) and I consider that their decisions have been consistent in omitting or refusing such proposals for balconies to the rear of this terrace. The appellant's contention that some other unauthorised balconies may already exist is not considered to be a valid reason to authorise the proposed development.

7.3.9. Having regard to the above, I consider that the balcony has unacceptable overlooking and overbearing impacts on adjoining properties, which would seriously detract from the quality of residential amenity and would be contrary to the policies and guidance of the Development Plan. The proposal would set an undesirable precedent for further such disorderly development and would not be justified by the existence of similar unauthorised developments in the vicinity of the site.

8.0 **Appropriate Assessment**

Having regard to the minor nature of the proposed development, and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 **Recommendation**

I recommend that permission should be **refused** for the reasons and considerations as set out below.

10.0 **Reasons and Considerations**

Having regard to the pattern of development in the area, it is considered that the balcony to be retained, by reason of its scale, height and proximity to site boundaries, would seriously injure the residential amenities and depreciate the value of properties in the vicinity by reason of overlooking and disturbance. The development for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

Stephen Ward
Senior Planning Inspector

29th March 2021

